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10 *Attorneys for Defendants*
11 *C. R. Bard, Inc. and*
12 *Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR
LEAVE TO FILE UNDER SEAL
CERTAIN EXHIBITS IN
SUPPORT OF BARD'S MOTION
TO EXCLUDE THE OPINIONS
OF ROBERT O. RITCHIE, PH.D.,
AND MEMORANDUM OF LAW
IN SUPPORT**

23 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively
24 “Bard”) hereby respectfully move this Court, pursuant to the Stipulated Protective Order
25 (Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for
26 leave to file under seal certain exhibits attached in support of Bard’s Motion to Exclude
27 the Opinions of Robert O. Ritchie, Ph.D., and Memorandum of Law in Support. These
28 exhibits, contain certain trade secrets and confidential information that are protected under

1 the Stipulated Protective Order, warranting protection from public disclosure. In addition,
 2 these exhibits, as well as the portions of Bard's Memorandum of Law that quote,
 3 reference, or characterize them, contain certain Plaintiffs' personal healthcare information
 4 that is protected under HIPAA and confidential under the Stipulated Protective Order,
 5 warranting protection from public disclosure. Accordingly, there is good cause to grant
 6 Defendants' Motion for Leave to File Under Seal Certain Exhibits in Support of Bard's
 7 Motion to Exclude the Opinions of Robert O. Ritchie, Ph.D., and Memorandum of Law in
 8 Support. Defendants have notified Plaintiffs of their intent to file this Motion. Plaintiffs
 9 have agreed to the filing of such motions in the past; however, to date, Plaintiffs' have not
 10 yet responded to Defendants' attempts to meet and confer on whether Plaintiffs oppose
 11 the Motion once Plaintiffs have had an opportunity to review the documents in issue. A
 12 list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

ARGUMENT AND CITATION OF AUTHORITY

14 Bard's Motion to Exclude the Opinions of Robert O. Ritchie, Ph.D., and some of
 15 the accompanying Exhibits contain certain Plaintiffs' personal health care information.
 16 Portions of the Submission itself, as well as Exhibit A (Excerpts from Dr. Ritchie's 6/9/17
 17 MDL Deposition Transcript), Exhibit D (Excerpts from Dr. Ritchie's 5/23/11
 18 *Newton/Kolenda* Deposition Transcript), and Exhibit F (Excerpts from Dr. Smith's 4/4/17
 19 MDL Deposition Transcript) discuss particular plaintiffs' respective medical histories and
 20 current medical conditions, are confidential under the terms of the Stipulated Protective
 21 Order (Doc. 269).

22 Similarly, portions of the Submission itself, as well as Exhibit A (Dr. Ritchie's
 23 6/9/17 MDL Deposition Transcript), Exhibit B (Portions of Dr. Ritchie's 3/2/17 Rule 26
 24 Report), Exhibit C (Portions of Dr. Ritchie's 5/12/17 Rebuttal Rule 26 Report), Exhibit D
 25 (Excerpts from Dr. Ritchie's 5/23/11 *Newton/Kolenda* Deposition Transcript), and Exhibit E
 26 (Portions of Dr. Betensky's 1/27/17 Rule 26 Report) contain pieces of highly
 27 competitive, confidential, proprietary information that warrant protection under Federal
 28 Rule of Civil Procedure 26(c)(1)(G) because the documents are not made public by Bard

1 and, if obtained by Bard's competitors, could give an unfair economic advantage to those
 2 competitors.

3 "When a court grants a protective order for information produced during discovery,
 4 it already has determined that 'good cause' exists to protect this information from being
 5 disclosed to the public by balancing the needs for discovery against the need for
 6 confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
 7 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-
 8 1780-PHX-JAT, 2012 WL 2260928 at *2 (D. Ariz. June 15, 2012) (sealing exhibits
 9 related to "Medicis' marketing strategy, Acella's product formulation,...various emails
 10 and deposition transcripts, viscosity test data, sales and marketing information, and
 11 various other documents" because "[m]uch of this information has been previously sealed
 12 by the Court, has been designated as confidential by the parties pursuant to the protective
 13 order in this case, or could otherwise potentially harm the parties if released publicly
 14 because of its confidential and sensitive nature.").

15 *See also, Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL
 16 737485, at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d
 17 772, 786 (3d Cir. 1994)). Indeed, Bard has already produced Exhibit E and designated it
 18 as "CONFIDENTIAL" pursuant to Stipulated Protective Order (Doc. 269), ¶ 6.

19
 20 RESPECTFULLY SUBMITTED this 24th day of August, 2017.

21 By: s/ Richard B. North, Jr.

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3 Peripheral Vascular, Inc.
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 24, 2017, the foregoing was electronically filed
3 with the Clerk of Court using the CM/ECF system which will automatically send e-mail
4 notification of such filing to all attorneys of record.

5 s/ Richard B. North, Jr.

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EXHIBIT A**DOCUMENTS PROPOSED TO BE FILED UNDER SEAL**

Defendants request they be permitted to file under seal the following documents in support of their Motion to Exclude the Opinions of Robert O. Ritchie, Ph.D., and Memorandum of Law in Support.

- Exhibit A: Dr. Ritchie's 6/9/17 MDL Deposition Transcript
- Exhibit B: Dr. Ritchie's 3/2/17 Rule 26 Report
- Exhibit C: Dr. Ritchie's 5/12/17 Rebuttal Rule 26 Report
- Exhibit D: Dr. Ritchie's 5/23/11 *Newton/Kolenda* Deposition Transcript
- Exhibit E: Dr. Betensky's 1/27/17 Rule 26 Report
- Exhibit F: Dr. Smith's 4/4/17 MDL Deposition Transcript